

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

TOMMY BELL,

Petitioner

VS.

JAMES E. DONALD,

Respondent

NO. 5:08-CV-00194 (CAR)

PROCEEDINGS UNDER 28 U.S.C. § 2254
BEFORE THE U.S. MAGISTRATE JUDGE

ORDER AND RECOMMENDATION

Respondent JAMES E. DONALD has filed a MOTION TO DISMISS petitioner TOMMY BELL's petition for habeas corpus relief on the grounds that the petition is untimely filed. Tab #10. Petitioner BELL subsequently filed a MOTION FOR EXTENSION OF TIME TO RESPOND(Tab #14), as well as his own MOTION TO DISMISS his petition *without* prejudice (Tab #15). Respondent DONALD filed a RESPONSE to the petitioner's motion seeking dismissal without prejudice wherein the respondent does not oppose the petitioner's motion seeking dismissal. Tab #17.

In view of the fact that respondent DONALD does not oppose the petitioner's request to dismiss the petition without prejudice, IT IS RECOMMENDED that petitioner BELL's MOTION TO DISMISS be GRANTED, and that respondent DONALD's motion to seeking dismissal be DENIED.¹ Pursuant to 28 U.S.C. §636(b)(1), the parties may serve and file written objections to this RECOMMENDATION with the district judge to whom this case is assigned **WITHIN TEN (10) DAYS** after being served with a copy thereof. In light of the foregoing, petitioner's motion seeking an extension of time is hereby DISMISSED as moot.

SO ORDERED AND RECOMMENDED this 24th day of NOVEMBER, 2008.



A handwritten signature in black ink, appearing to read "Claude W. Hicks, Jr.".

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE

¹It should be noted that if, in fact, the instant petition is untimely filed, dismissal without prejudice will not afford the petitioner any advantage should he choose to re-file at a later date.